STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7578

Investigation into Amendment of Central Vermont Public Service Corporation's Voluntary Renewable Pricing Program)

Order entered: 12/8/2009

ORDER APPROVING AMENDMENT TO VOLUNTARY RENEWABLE PRICING PROGRAM

I. INTRODUCTION

In this Order, we approve an amendment to Central Vermont Public Service Corporation's ("CVPS") voluntary renewable pricing program, which is known as CVPS Cow Power (referred to herein as "the Program" or the "Cow Power Program"). Specifically, we approve a temporary change, for a term not to exceed 180 days, in the kWh rates paid to Farm-Producers who participate in the program. The new temporary rate will be a flat 8 cents per kWh, instead of 95 percent of current regional wholesale power market prices.

II. BACKGROUND AND PROCEDURAL HISTORY

The Public Service Board ("Board") originally approved the Program in a July 30, 2004, Order in Docket 6933.

On October 19, 2009, CVPS filed a Plan for Amendment of the CVPS Cow Power Program ("Plan"). According to CVPS, the Plan is the product of collaboration among stakeholders including Farm-Producers, the Vermont Department of Public Service ("DPS"), Lieutenant Governor Brian Dubie and Representative Chris Bray.[1] CVPS requested that the Board "confirm that regulatory approval under [30 V.S.A. § 8003] is not required for [the Plan's] immediate implementation."[2] Alternatively, CVPS requested that the Board consider its filing a

1. Letter from Morris L. Silver, Esq., for CVPS, to Susan M. Hudson, Clerk, Board, dated October 19, 2009, at 1.

2. Letter from Morris L. Silver, Esq., for CVPS, to Susan M. Hudson, Clerk, Board, dated October 19, 2009, at 2.

request for expedited review and approval of the Plan and amendment of the affected Program terms and conditions.

CVPS's October 19 filing stated that the DPS concurs that approval of the Plan is not required for its implementation, and that the DPS "fully supports" the implementation of the Plan.[3] CVPS's filing also stated that, if the Board decides approval is required, the DPS supports the expedited issuance of such approvals.

On October 28, 2009, the Clerk of the Board sent CVPS and the DPS a memorandum stating that the Board had determined that the Plan does need Board approval because, as CVPS noted in its filing, "the changes will alter key findings that the Board made when it initially approved the Program."[4] The memorandum also requested additional information regarding the Plan.

On November 12, 2009, CVPS filed the requested additional information ("CVPS Response").

On November 17, 2009, the DPS filed comments on the Plan and the additional information filed by CVPS ("DPS Comments").

III. Comments of the Public

On November 19, 2009, Lieutenant Governor Brian Dubie filed a letter supporting CVPS's request to amend its Cow Power Program to provide interim support to the three dairy farms in its service territory. In addition, the Lieutenant Governor states that the farms have hosted several studies and pilot projects that were conducted without compensation to the farms, and that provide benefits to Vermonters beyond those participating in the Cow Power Program. These studies have included: a study by the University of Vermont ("UVM") Extension Service on digester economics; a pilot study to evaluate the use of lake weeds as digester feedstock; a pilot project by a group of UVM graduate engineering students creating a computerized digester and "gen-set" monitoring and control system; a private sector initiative to utilize digester effluent

3. Letter from Morris L. Silver, Esq., for CVPS, to Susan M. Hudson, Clerk, Board, dated October 19, 2009, at 2.

4. Plan at 12.

to grow algae for use as biofuel; and a UVM study evaluating the use of digested solids as a substitute bedding material for cows.

On November 23, 2009, the three Farm-Producers currently enrolled in the Program filed a letter supporting CVPS's interim Plan that would enable CVPS and the Farm-Producers to continue to negotiate and obtain Board-approval of a long-term solution. The Farm Producers state that they are struggling to continue operating their generators at current market prices, and the proposed temporary rate is intended to enable the Farm-Producers to continue operating while a long-term solution is implemented. In addition, the Farm-Producers assert that there has been a significant public benefit derived from the early agricultural methane projects enrolled in the Program.

On November 24, 2009, Representative Christopher Bray filed a letter supporting rapid approval of the proposed 180-day interim rates. Representative Bray states that the farms enrolled in the Program have continued to lose money on the power they are generating. In addition, Representative Bray states that these "pioneer" farm-methane generators have contributed to both technical knowledge of this type of technology and public interest in renewable energy.

IV. The Plan

The Plan states that the three Farm-Producers that currently sell energy to CVPS under the Program are experiencing very low energy revenues due to wholesale locational marginal prices reaching levels much lower than the Farm-Producers expected. According to CVPS, total Farm-Generation revenues have not been covering project costs since market prices fell significantly earlier this year and because of this, the Farm-Producers are "on the verge" of ceasing to generate power.[5]

The Plan describes CVPS's strategy to: (1) enlarge the term of the supply arrangements established as a part of the Cow Power Program; (2) convert the pricing for energy purchases from Farm-Producers from a formula rate based on hourly locational market prices to a more stably priced rate based on an assessment of long-term avoided costs that takes into account the

5. Plan at 2-3.

sustainable cost of farm-generation production; and (3) provide support for the participating Farm-Producers to enable them to continue production during low-market conditions which they contend are threatening the financial viability of their generation operations.[6]

Under the Plan, CVPS proposes to take the following steps:

> (a) Request that the CVPS Renewable Development Fund temporarily supplement the energy price received by the three Farm-Producers through the award of supplemental financial incentives to support the continued operation and interconnection of the Farm-Generation facilities to CVPS's electric system;
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> (b) Cancel, replace or amend the existing Farm-Producer Power Purchase Agreements with temporary provisions to pay a flat 8 cents/kWh for energy delivered to CVPS. These temporary rates would be for a term of up to 180 days. The purpose of this temporary rate change is to enable CVPS and the Farm-Producers the opportunity to continue negotiations leading to the replacement of their existing power supply arrangements with new longer-term arrangements as called for under the Plan;
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> (c) Collaborate with stakeholders to complete an analysis of (1) the Farm-Producers' cost of production, and (2) long-term avoided costs; and
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> (d) Negotiate replacement supply agreements or amendments with each CVPS Farm-Producer that transitions the supply arrangement from one based on short-term locational marginal costs to one that approximates a balance of the amount necessary to sustain production by the Farm-Producer and the best current estimate of levelized long-term avoided costs.[7]

V. Findings

1. In 2009, CVPS expects to purchase 4,690 MWhs from the three Farm-Producers located in CVPS's service territory that are currently under contracts with CVPS that employ short-term market-based pricing. The collective capacity of the three generation projects is 0.592 MW. CVPS Response at 1, 3.

2. During the first 10 months of 2009, CVPS sold 10,627 MWh under its Cow Power Program. Total 2009 sales to Cow Power customers are expected to be approximately 12,635 MWh. CVPS Response at 4.

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6. Plan at 1.

7. Plan at 3-4.

3. CVPS currently pays each Farm-Producer 95 percent of the locational marginal price at a specified node. Plan at 8.

4. Regional locational marginal prices for energy have trended significantly lower in 2009. Plan at 2, 20.

5. The proposed temporary 8 cents/kWh rate is nearly double the prevailing locational marginal price in the last six months for each of the nodes where the Farm-Generation projects interconnect with CVPS; however, it is lower than many other like seasonal periods during the past few years that the Cow Power Program has been in effect. Plan at 6.

6. Farm-Producers are not paid for generation capacity they deliver to CVPS. These capacity benefits have accrued to CVPS's customers who do not participate in the Cow Power Program. Plan at 9.

7. The incremental power costs associated with the proposed temporary 8 cents/kWh rate are expected to range from $46,257 to $92,515. These costs are within the range of the total capacity benefits that CVPS has enjoyed since the credits became available for Cow Power projects. CVPS Response at 3.

8. Under the Plan, CVPS will continue to recover the cost of its purchases from the Farm-Producers under CVPS's Alternative Regulation Plan through "Category A" of the Power Cost Adjustment Mechanism. One hundred percent of Category A costs are recovered from ratepayers. Plan at 10.

VI. Discussion

Sections 8001 through 8003 of Title 30 authorize the Board to approve the provision of optional, voluntary, renewable pricing programs by electric utilities, provided the programs meet certain requirements. One of these statutory requirements is that:

> Any renewable pricing program shall require that any costs of power in excess of the company's alternative cost of power shall be borne solely by those customers who elect to participate in the renewable pricing program.[8]

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8. 30 V.S.A. § 8003(c).

When the Board approved CVPS's Cow Power Program in 2004, it concluded that the Program met the various statutory requirements for a voluntary renewable pricing program and adequately addressed the policy factors that must be taken into account by the Board.[9] With respect to Section 8003(c), the Board concluded that:

> The [Voluntary Renewable Service] Rider is priced in the form of a premium relative to the underlying tariff that would otherwise apply. Consistent with the statute's requirements, this premium is cost-based and reasonably reflects the difference between acquiring the renewable energy and CVPS's alternative cost of power, including administrative costs. In addition, any costs of power resulting from the [Voluntary Renewable Pricing] Program that are in excess of CVPS's alternative cost of power will be borne solely by those customers who participate in the Program.[10]

The Board further stated that:

> As described in the model "Farm-Producer Power Purchase Agreement" that is Attachment B to the MOU, CVPS proposes to purchase power and [Renewable Energy Certificates] at market based prices. This should mean that any incremental energy acquired under the Program can be resold into the wholesale power market without imposing incremental costs on CVPS.[11]

CVPS's proposed amendment to its Cow Power Program affects the Board's 2004 conclusions regarding this issue. Step b of the Plan provides that CVPS would purchase power from the Farm-Producers at 8 cents/kWh for up to the next 180 days. This rate is expected to be significantly above recent short-term market prices. Because CVPS operates under an Alternative Regulation Plan that includes a Purchased Power Adjustment Mechanism, the additional cost of the power purchased from the Farm-Producers will be paid by all CVPS customers, including those who have not chosen to participate in the Program.[12]

Despite this, CVPS and the DPS argue that the temporary rate would not violate the requirement contained in Section 8003(c) that the costs of power in excess of the company's

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9. Docket 6933, Order of 7/30/04 at 18-19.

10. Docket 6933, Order of 7/30/04 at 25 (footnote omitted).

11. Docket 6933, Order of 7/30/04 at 30 (footnote omitted).

12. If CVPS were still under traditional regulation, the additional power costs would not automatically be passed through to all CVPS ratepayers.

alternative cost of power shall be borne solely by participating customers. They assert that all CVPS customers have benefitted from the total capacity benefits that CVPS has earned since capacity credits became available for Cow Power projects because those credits decreased the cost of power for all CVPS customers. As described by the DPS, it is as if the capacity benefits for the non-participating customers have been pooled since the inception of the capacity market and now will be used to benefit the Cow Power program and its voluntary participants for a limited 180 days. The DPS maintains that this long-term offset of capacity benefits to the short-term interim rate allows this pricing provision to stay within the confines of the statute.[13]

In addition, CVPS contends that the continued operation of the Farm-Generators provides ancillary benefits to CVPS ratepayers who do not participate in the Program. These ancillary benefits identified by CVPS include: reduced odors near participating farms, destruction of greenhouse gases, and improved nutrient management.[14] Furthermore, CVPS asserts that it has learned a great deal through its efforts to integrate the distributed generation projects that participate in the Program into its electric system and that this information will benefit all CVPS customers as CVPS integrates the many new renewable projects to be developed under the Sustainably Priced Energy Enterprise Development ("SPEED") program.[15]

Finally, CVPS states that the proposed temporary rate is intended to enable the Farm-Producers to continue operating (and providing the benefits identified above) while a long-term solution is implemented.[16]

After reviewing the Plan, the CVPS Response, the DPS Comments, and taking into account the comments by the public, we conclude that amending the Program as called for by Step b of the Plan is consistent with the statutory requirements for voluntary renewable pricing programs. Even though non-participants will pay a portion of the cost of the power produced by the Farm-Generators, their payments will be offset by the value of the total capacity benefits that

13. DPS Comments 1-2.

14. Plan at 3.

15. Plan at 3; CVPS Response at 5.

16. Plan at 4.

CVPS has earned since capacity credits became available for Cow Power projects and that had not been specifically accounted for in the Program. The testimony in the record indicates that the value of these capacity credits is roughly equal to the incremental power costs associated with paying the Farm-Producers 8 cents/kWh.[17] Therefore, the implementation of a temporary 8 cents/kWh rate for power produced by the Farm-Producers for a term of up to 180 days is consistent with the requirements of Section 8003(c).

We further conclude that amending the Program as called for in Step b is in the public interest. 30 V.S.A. § 8001(a)(2) provides that it is in the public interest to promote state energy policy by "[s]upporting development of renewable energy and related planned energy industries in Vermont, in particular, while retaining and supporting existing renewable energy infrastructure." Temporarily modifying the Program's terms so as to enable Farm-Producers to continue to generate power while negotiating a longer-term solution with CVPS is consistent with this goal.

However, we emphasize that it will be critical for CVPS, the Farm-Producers and other stakeholders to work together to develop alternative pricing arrangements in time for the Board to review the proposed changes before the end of the 180-day period. Because our conclusion that the temporary 8 cents/kWh rate meets the requirements of Section 8003(c) is based upon a comparison of the long-term capacity benefits with the short-term additional power costs, it is unlikely the rate could be extended beyond the 180-day period, absent unforeseen changes in the energy or capacity power markets.

Finally, we note that the Plan includes four steps, while our Order today addresses only Step b. This is because, with respect to the other three steps: Step a, the provision of additional funds to the Farm-Producers by the CVPS Renewable Development Fund, has already occurred; Step c, the completion of certain analyses, does not require Board approval; and Step d, changes to the Cow Power Program as a result of longer-term replacement supply agreements or amendments, cannot be reviewed by the Board until the terms of the replacement supply

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17. We also note that CVPS paid the Farm-Producers 95% of the locational marginal price. Accordingly, to the extent that CVPS sells any energy not needed to meet its requirements into the market, and the administrative costs associated with these sales are below the 5 % margin, CVPS ratepayers may have received some additional economic benefit, although this benefit has not been quantified.

agreements or amendments are known. We expect CVPS to promptly file such replacement agreements or amendments with the Board in this Docket as soon as they have been developed.

VII. Conclusion

For the reasons set forth above, we approve a temporary change, for a term not to exceed 180 days, in the kWh rates paid to Farm-Producers who participate in CVPS's Cow Power Program. The new temporary rate will be a flat 8 cents per kWh, instead of 95 percent of current regional wholesale power market prices.

VIII. Order

It Is Hereby Ordered, Adjudged and Decreed by the Public Service Board of the State of Vermont that:

1. Central Vermont Public Service Corporation's ("CVPS") Voluntary Renewable Pricing Program is amended to allow CVPS to pay Farm-Producers a temporary rate of 8 cents/kWh for a term not to exceed 180 days.

2. CVPS shall promptly file any longer-term replacement power supply contracts or agreements with Farm-Producers in this Docket as soon as they are developed.

Dated at Montpelier, Vermont, this 8th day of December, 2009.

s/ James Volz	)	
	)	PUBLIC SERVICE
	)	
s/David C. Coen	)	BOARD
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	)	OF VERMONT
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OFFICE OF THE CLERK

FILED: December 8, 2009

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

JOHN D. BURKE - DISSENT

I respectfully dissent from the opinion of my colleagues in this matter because I view their decision as one that even on a temporary basis, approves a rate nearly double the market price (8 cents/kWh). In fact the farm producers presently receive, under the approved program, 95% of market price, just over 4 cents/kWh.

While I am aware of the fact that the market price has fallen significantly, the choice by CVPS to move to an Alternative Regulation Plan has ramifications here. This Alt Reg Plan requires that all customers of CVPS will bear the increase between the current rate paid for cow power and the 8 cent/kWh rate for cow power as proposed in the amendment.

30 V.S.A. § 8003(c) however, provides:

> Any renewable pricing program shall require that any **costs** (emphasis added) of power in excess of the company's alternative cost of power shall be borne solely by those customers who elect to participate in the renewable pricing program.

The majority decision today flies in the face of the clear language of this statute. We affirmed an understanding of the statute in Docket 6933. The statute must be applied according to its plain language, unless its language is ambiguous. I find no ambiguity in the language quoted above. Only those customers of CVPS who chose to participate in the renewable pricing program should pay this increase.

I have advocated on many occasions for the preservation of the family farm in Vermont in large part because my family ran such an enterprise at the time I was born. It is a shame to see them disappear. Nevertheless, I cannot agree to spread this "premium" over the ratepayers that did not opt into the renewable pricing program. As stated above, I find this statute to be unambiguous. The amendment requested in the petition in this docket is more properly characterized as an amendment to the statute and rewriting the statute is the province of the legislature, not of the Public Service Board.

Dated at Montpelier, Vermont, this 8th day of December, 2009.

s/ John D. Burke

John D. Burke, Board Member